IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE MR JUSTICE R.SUBHASH REDDY
WRIT PETITION NO :30466 of 1997

Dated 21st February, 2007

Between

CJ George

…Petitioner

and

Commissioner for Prohibition and Excise, Government of AP, Hyderabad and, ors

…Respondents.

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO :30466 of 1977

ORDER:

In this Writ Petition, the petitioner has questioned the order of confiscation dated 10-04-1997 passed by the second respondent, as confirmed by the first respondent by order dated 20-10-1997, in exercise of powers under Section 13 of the AP Prohibition Act, 1995.

The petitioner is the owner of the lorry bearing registration No.TN.31-7889. The said vehicle was intercepted and seized on 23-12-1996 at Korukonda check post, on the ground that it was carrying 230 cartons of liquor in violation of the provisions of the AP Prohibition Act, 1995. Pursuant to the seizure, a case was registered in Crime No.

91/96-97 on the file of the Prohibition and Excise Station, Hindupur for the alleged violation of the provision under Section 8(b)(ii) of the Act. Consequent to the said registration of case and seizure, proceedings were initiated by the second respondent to confiscate the vehicle and the seized contraband from the said lorry under Section 13 of the AP Prohibition Act, 1995. The primary authority, on the ground that in spite of issuance of show cause notice dated 15-02-1997 the petitioner did not file any explanation, had passed orders of confiscation based on the material available on record. As against the said order, appeal was preferred before the first respondent and the same was dismissed by the appellate authority by order dated 20-10-1997.

The impugned orders are questioned on the ground that the order of confiscation was passed without issuing notice to the petitioner as contemplated under Section 13A of the AP Prohibition Act, 1995. It is submitted by the learned Counsel for the petitioner that in spite of raising several grounds before the appellate authority, even the appellate authority did not consider the appeal in proper perspective.

With reference to the submission of the learned Counsel for the petitioner that the petitioner was not issued any show cause notice before passing the order of confiscation, it is submitted by the learned Government Pleader appearing for the respondents that the petitioner himself filed an application for release of the vehicle through an Advocate and as such, notice was served on the advocate of the petitioner, and, in that view of the matter, it cannot be said that the order of confiscation was passed without notice and opportunity to the petitioner.

Section 13 of the AP Prohibition Act, 1995 deals with confiscation of certain things by the Prohibition and Excise authorities in certain cases. Pursuant to the seizure of the property, the Deputy Commissioner of Prohibition and Excise is empowered to pass orders as contemplated under Section 13(2) of the Act. But however, in Section 13(A) of the Act, which is inserted by Act No.35 of 1995, there is a specific provision to the effect that no order of confiscation of any property shall be made under Section 13 unless the person from whom the property is seized is given a notice in writing informing him of the grounds on which it is proposed to confiscate such property and is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice. In this case, it is not in dispute that the petitioner is the owner of the vehicle and merely because earlier an application was moved through an Advocate, order of confiscation cannot be passed by giving notice to the advocate of the petitioner. Once proceedings are initiated for confiscation, issuance of notice to the owner of the property is mandatory under Section 13(A) of the AP Prohibition Act, 1995. Though in the order of the appellate authority it is stated that notice was served on the advocate of the petitioner, but however, it is to be noticed that as per Section 13A of the Act, notice is required to be served on the person from whom the property is seized. The order of confiscation was passed only on the ground that explanation was not filed to the notice, which was served on the advocate of the petitioner. Even the appellate authority did not consider the matter in proper perspective and merely confined to the findings of the primary authority by recording a finding that there is no new material produced by the petitioner to substantiate his case.

For the foregoing reasons, I set aside the order of confiscation

dated 10-4-1997 passed in Proceedings Rc.No.189/97/B2 by the second respondent, as confirmed by the first respondent in the order dated 20-10-1997 in Proceedings Cr.No.3391/97/DPE/B2, on the short ground that the confiscation order was passed without issuing a notice to the petitioner as contemplated under Section 13(A) of the AP Prohibition Act, 1995, which is mandatory. The bank guarantee produced by the petitioner pursuant to the interim order this Court dated 24-11-1997 shall stand discharged.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: 21-02-2007.
Msnr.